

SUBCHAPTER G : WATER SAVING PERFORMANCE STANDARDS
§290.251-290.266

§290.251. Purpose, Authority, and Definitions.

(a) Purpose. The purpose of these sections is to establish water saving performance standards and labeling requirements for sink and lavatory faucets, shower heads, drinking water fountains, urinals, toilets, and flushometer toilets that are manufactured, imported, or otherwise supplied for sale in the State of Texas, and to establish labeling requirements for commercial or residential clothes-washing and dishwashing machines and lawn sprinklers to assist the consumer in making an informed purchasing decision. These sections apply to manufacturers, importers, and major suppliers of plumbing fixtures, who sell, offer for sale, distribute, or import plumbing fixtures into the state. These sections do not apply to plumbing fixtures manufactured in the state for sale outside of the State.

(b) Authority. The authority for these sections is the Health and Safety Code, Chapter 372, titled "Environmental Performance Standards for Plumbing Fixtures".

(c) Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ANSI - The American National Standards Institute.

(2) ASME - The American Society of Mechanical Engineers

(3) Commission - The Texas Natural Resource Conservation Commission

(4) Executive director - The executive director of the Texas Natural Resource Conservation Commission.

(5) Importer - A business or individual that brings into the state plumbing fixtures from other countries or states for resale or installation (other than for their own domicile) within the state.

(6) Major supplier - A business or individual that provides plumbing fixtures to others for resale or installation (other than for their own domicile) within the state.

(7) Manufacturer - Someone that makes plumbing fixtures.

(8) Model - A type or design of a plumbing fixture

(9) Order - A request to purchase plumbing fixtures from a manufacturer, major supplier or importer.

(10) Plumbing fixture - A sink faucet, lavatory faucet, faucet aerator, shower head, urinal, toilet, flush valve toilet, or drinking water fountain.

(11) Toilet - A toilet or water closet except a wall mounted toilet that employs a flushometer valve.

(12) APA - The Administrative Procedures Act.

§290.252. Design Standards.

(a) A person may not sell, offer for sale, distribute, or import into the State of Texas a plumbing fixture for use in the state unless the plumbing fixture meets the water saving performance standards provided by subsection (b) of this section and the plumbing fixture is listed in §332.253 of this title (relating to Plumbing Fixture List).

(b) The water saving performance standards for a plumbing fixture are those established by the American National Standards Institute (ANSI), current revision, or the following standards, whichever are the more restrictive.

(1) The maximum flow from a sink or lavatory faucet or a faucet aerator shall not exceed 2.20 gallons of water per minute at a pressure of 60 pounds per square inch when tested in accordance with ANSI testing procedures.

(2) The maximum flow from a shower head shall not exceed 2.75 gallons of water per minute at a constant pressure equal to 80 pounds per square inch when tested in accordance with ANSI testing procedures.

(3) The maximum volume of water per flush from a urinal and the associated flush valve, if any, shall not exceed an average of one gallon when tested in accordance with ANSI testing procedures.

(4) The maximum volume of water per flush from a toilet shall not exceed an average of 1.60 gallons when tested in accordance with ANSI testing procedures.

(5) The maximum volume of water per flush from a wall mounted toilet that employs a flushometer valve shall not exceed an average of 2.00 gallons when tested in accordance with ANSI testing procedures.

(6) All drinking water fountains shall be operated by a self-closing valve.

§290.253. Plumbing Fixture List.

(a) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer or importer to meet the water saving performance standards established by §290.252(b) of this title (relating to Design Standards). To have a plumbing fixture included on the commission's current list, a manufacturer or importer must:

(1) furnish identification method and testing data which clearly indicates that the plumbing fixture was tested in accordance with American National Standards Institute requirements and complies with the flow requirements established in §290.252(b).

(2) submit an identified sample plumbing fixture to the commission for testing and verification of water saving performance standards by the department; and

(3) pay the appropriate fee as listed in §290.255 of this title (relating to Fees).

(b) The commission retains the right to request a sample of the plumbing fixture for testing.

§290.254. Removal from List.

(a) A plumbing fixture listed in §290.253 of this title (relating to Plumbing Fixture List) shall be removed from the list if:

(1) the commission finds the manufacturer's or importer's certification to be inaccurately certified;

(2) the manufacturer or importer is delinquent in paying the fee as set forth in §290.255 of this title (relating to Fees); or

(3) the department finds that the fixture does not meet the standards set forth in §290.252(b) of this title (relating to Design Standards).

(b) Prior to removal of the plumbing fixture from the list, a manufacturer or importer shall have the right to seek a hearing with the commission. A hearing held pursuant to this section shall be held in accordance with the Administrative Procedures Act (APA) and the commission's formal hearing procedures.

(c) A plumbing fixture reinstated on the list after being removed due to a delinquent renewal fee will be considered a new product on the list.

§290.255. Fees.

An initial fee of \$50 per plumbing fixture model will be assessed for certification review, inspection, identification and listing by the commission. An annual renewal fee of \$25 per plumbing fixture model will also be assessed for maintenance of current listing. This fee will be payable to the commission by the manufacturer or importer of the listed plumbing fixture before October 31 of each year.

§290.256. Exemptions.

These sections do not apply to a plumbing fixture:

(1) that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer in Texas [of plumbing fixtures] on or before January 1, 1992;

(2) such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards established by these sections (example: fixtures in handicapped modified showers, etc.);

(3) originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date; or

(4) imported only for use at the importer's domicile.

§290.260. Labeling.

(a) Labeling requirements. A person may not sell, offer for sale, distribute or import into this state a plumbing fixture unless the plumbing fixture, including each component of a toilet, flush valve toilet or urinal and the associated packaging are marked and labeled in accordance with these sections. The labeling requirements in these sections shall take effect on October 25, 1994.

(1) Each water closet, urinal and flush valve shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 USC §6294 et. seq) and as amended.

(2) Each water closet, urinal and flush valve package shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 USC §6294 et. seq.) and as amended.

(3) Each faucet, aerator and showerhead shall be marked in accordance with the National Energy Policy Act of 1992 (42 USC §6294 et seq.) and as amended, except that each showerhead, flow restricting or controlling spout end device and aerator shall bear a permanent legible mark indicating the flow rate, expressed in gallons per minute (gpm). The flow rate shall be the actual flow rate or the maximum flow rate specified in §290.252 of this title (relating to Design Standards).

(4) Each faucet, aerator and showerhead package shall have the flow rate expressed in gallons per minute (gpm) clearly marked on the front.

(b) Prohibitions. A person may not sell, offer for sale, distribute or import into this state a new commercial or residential clothes washing machine, dish washing machine or lawn sprinkler unless the clothes washing machine, dish washing machine or lawn sprinkler is marked or labeled in accordance with these sections:

(1) each clothes washing machine and dish washing machine shall have an attached label that shows the amount of water used per cycle; and

(2) each lawn sprinkler shall be marked with the water usage expressed in gallons per minute (gpm) by either a permanent mark on each sprinkler, or a label or tag attached to each sprinkler.

(c) Exemptions. This section does not apply to those clothes washing machines and dish washing machines that are subject to and are in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, public law 100-12 (42 USC 6294) and as amended.

§290.265. Administrative Penalty.

(a) A person who violates these sections shall be assessed an administrative penalty in an amount described in paragraphs (1)-(3) of this subsection but not to exceed \$5,000 for each violation and for each day of a continuing violation.

(1) The penalty for sale, offering for sale, distributing or importing a plumbing fixture which does not meet the requirements of these sections shall be a minimum of \$25 and a maximum of \$500 for each unit sold, offered for sale, distributed or imported. The amount of the assessed penalty will be based upon subsequent cooperation by the violators with the commission.

(2) The penalty for sale, offering for sale, distributing, or importing a plumbing fixture not labeled in accordance with these sections shall be a minimum of \$25 and a maximum \$500 for each unit sold, offered for sale, distributed, or imported. The amount of assessed penalty will be based upon subsequent cooperation by the violators with the commission.

(3) The penalty for willful and continuing violation of paragraphs (1) and/or (2) of this subsection shall be above \$5,000 for each violation.

(b) A person against whom an administrative penalty is assessed is entitled to a notice and hearing on the assessment of the penalty in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the commission's formal hearing procedures as described in 30 TAC Chapter 337 (relating to Enforcement).

(c) Not later than the 30th day after the date on which the commission's order assessing the administrative penalty is final, the person assessed the penalty shall pay the full amount of the penalty or file a petition for judicial review. A person who fails to comply with this subsection waives judicial review.

§290.266. Civil Penalty; Injunction.

(a) A person who violates these sections is subject to civil penalty not to exceed \$5,000 for each violation and for each day of a continuing violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate these rules, the commission, a county, or a municipality may bring a civil action in a district court in Travis County, the county in which the defendant resides or the county where the violation occurred, is occurring or is threatened for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) assessment of a civil penalty for a violation; or

(3) both injunctive relief and a civil penalty.

(c) The commission is an indispensable party in a suit brought by a county or municipality under this section.